

MATRIX OF ENVIRONMENTAL RESERVATIONS, USE RESTRICTIONS,  
COVENANTS, CONDITIONS, AGREEMENTS, AND NOTICES  
FOR PROPOSED MULTIPLE CONVEYANCES OF  
SUNFLOWER ARMY AMMUNITION PLANT

THIS MATRIX OF ENVIRONMENTAL RESERVATIONS, USE RESTRICTIONS, COVENANTS, CONDITIONS, AGREEMENTS AND NOTICES FOR PROPOSED MULTIPLE CONVEYANCES OF SUNFLOWER ARMY AMMUNITION PLANT ("Matrix") is made and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 2000, in accordance with the separate written *Memorandum of Agreement* (the "Memorandum of Agreement"), dated \_\_\_\_\_, between the **United States of America**, acting by and through the General Services Administration and pursuant to authority of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, 40 U.S.C. §§ 471, et seq.), as amended, and the rules, orders, and regulations issued pursuant thereto ("**Government**") and **Kansas Statewide Projects Development Corporation**, created under authority of Kansas Statutes Annotated, Section 74-8904(v), as amended ("**KSPDC**").

ARTICLE I

**1.0. BACKGROUND AND PURPOSE**

**1.1** The U.S. Department of the Army ("**Army**") operated an ammunition plant on the property known as Sunflower Army Ammunition Plant ("Sunflower") consisting of approximately nine thousand sixty-five (9,065) acres of land located in Johnson County, State of Kansas

**1.2** There are historical records and other information indicating that there may have been plant activities at Sunflower on the Property involving the storage, release and disposal of hazardous substances by the **Army** as defined or designated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §§ 9601,9602, as amended. Site maps providing the legal description of the Property together with a description of such plant activities is attached hereto, marked **Attachment "A"**, and made a part hereof.

**1.3** The **Army** has investigated and continues to have the responsibility to investigate or cause to be investigated the Property in order to determine whether the Property poses any threat to human health or the environment and to determine whether the Property must be remediated or addressed in some other manner, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act , as amended,(CERCLA) (42 U.S.C. §§ 9620).

**1.4** Notwithstanding this continuing process, the Property will be transferred to **KSPDC** prior to completion of all remedial action required by CERCLA. Pursuant to the terms of an Agreement between the United States Army (Army) and **The OZ Entertainment Company**, , the Army and OEC , and their

respective successors and assigns, will complete all remedial action on the Property required by CERCLA, and as required by a Consent Order issued by the Kansas Department of Environmental Health and Environment (KDHE) to OEC, and take such further action on the Property as necessary to protect human health and the environment.

**1.5** Conveyance of the Property by the **Government** to **KSPDC**, its successors and assigns, will be accomplished by multiple Deferred Covenant Quitclaim Deeds (the "Quitclaim Deeds") which will be issued by the **Government** pursuant to Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(C)).

**1.6** The purpose of this Matrix is to provide for the protection of human health and the environment on and from the Property by establishing necessary reservations, use restrictions, covenants, conditions, agreements and notices affecting either: (a) all of the Property, or (b) certain portions of the Property, as appropriate. The Matrix also establishes a procedural framework for termination, removal and modification of use restrictions, covenants, conditions, and agreements, and notices.

## ARTICLE II

### 2.0 DECLARATIONS

**2.1** Pursuant to the *Memorandum of Agreement*, the **Government** hereby declares that it will complete, or require to be completed, all environmental response actions on the Property required pursuant to applicable law. All necessary response actions on deferred covenant property will be taken by the **Army**, as appropriate, or on behalf of the **Army** in accordance with schedules approved by the KDHE. To the extent required to be completed by OEC, schedules for completing response actions are ongoing and future schedules will be developed pursuant to the *Consent Order* dated \_\_\_\_\_ entered into between the KDHE, and OEC. The *Consent Order* establishes enforceable schedules and deadlines for the performance and completion of environmental investigation and cleanup activities at Sunflower by OEC.

**2.2** The **Army** shall submit on an annual basis through established channels, appropriate budget requests to the Director of the Office of Management and Budget that adequately address agreed upon schedules for investigation and completion of all necessary response actions. The actual amount available for such effort is subject to congressional authorizations and appropriations. To the extent that OEC performs cleanup that adequately achieves agreed upon schedules for investigation and completion of all necessary response action as provided in the *Consent Order*, Army's budget requests will be appropriately reduced. Nothing in this Matrix shall be interpreted to require obligations or payments by the United States in violation of the Anti-deficiency Act, 31 U.S.C. Section 1341.

**2.3** The **Government** declares that the Property, or any portion thereof, to the extent applicable as hereinafter set forth, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following reservations, use restrictions, covenants, conditions, agreements and notices declared and agreed to be in furtherance of the transfer of the Property by the **Government** to **KSPDC** and in any subsequent conveyances of interests in the Property, in fee or otherwise.

Such use restrictions, covenants, conditions, agreements and notices, to the extent applicable, shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title, or interest in the Property or any portion thereof; shall inure to the benefit of every portion included within the Property and any interest therein, and the same shall inure to the benefit of and be binding upon all persons having or acquiring any future right, title, or interest in the Property, or any portion thereof, and may be enforced by the United States of America, or by the State of Kansas, or its political subdivisions, including, but not limited to KDHE, KSPDC, or other designated government agencies, as hereafter provided.

**2.4** A Table of Use Restrictions, Covenants, Conditions, Agreements and notices is attached hereto as **Attachment "B"**, and which are hereby incorporated, and made a part of this Matrix.

**2.5** The **Government** declares that all use restrictions, covenants, conditions, agreements and notices, identified in Section **2.4**, above, to the extent applicable as set forth of Section **3.0** and **4.0**, below, shall be incorporated into each and every deeds, leases and other instruments of conveyance covering the Property, or any portion thereof.

**2.6** All purchasers, lessee, or possessors of all or any portion of the Property, or any interest therein, shall be deemed by their purchase, leasing, or possession of such interest in the Property, to be in accord with the foregoing and agrees for and among themselves, and their respective heirs, successors and assigns, and their agents, employees, and lessees of such owners, heirs successors and assigns, that the reservations, covenants, conditions, agreements, use restrictions, and notices identified herein must be adhered to for the benefit of all future owners and occupants to protect human health and the environment, and that their interest in the Property shall be subject to the applicable reservations, covenants, conditions, agreements, use restrictions and notices contained herein.

### **ARTICLE III**

#### **3.0 PERMANENT RESERVATIONS, COVENANTS, CONDITIONS, NOTICES AND USE RESTRICTIONS AFFECTING ALL OF THE PROPERTY**

**3.1** The following permanent reservations, covenants, conditions, use restrictions, agreements, and notices, more particularly identified in Section **2.4**, above (**Attachment B**), shall be incorporated into each and every Quitclaim Deed covering any of the Property to be executed and delivered by the **Government** to **KSPDC** at any closing of the parties:

<b>I(A)-(B)</b>	<b>Specific Reservations Retained by the Government</b>
<b>II(A)-(D)</b>	<b>CERCLA Covenant and Reservations</b>
<b>III(B)</b>	<b>Non-Residential Use Restriction</b>
<b>IV(A)</b>	<b>Notice of Possible Explosives Contamination</b>
<b>IV(B)</b>	<b>Notice- Asbestos</b>
<b>IV(C)</b>	<b>Notice -Lead Based Paint</b>

IV(D)	Notice - Wetlands Area
IV(E)	Notice - 100 Year Floodplain
IV(F)	Notice of FAA Restrictions
IV(G)	Notice of Historic Property/Specific Conditions, Restrictions, Limitations and Covenants
IV(F)	Notice of FAA Restrictions
IV(G)	Notice of Historic Property/Specific Conditions, Restrictions, Limitations and Covenants

#### **ARTICLE IV**

##### **4.0 INTERIM RESERVATIONS, COVENANTS, CONDITIONS, NOTICES AND USE RESTRICTIONS AFFECTING CERTAIN TRACTS OF THE PROPERTY**

**4.1** In addition to the permanent reservations, covenants, conditions, use restrictions, agreements, and notices, more particularly identified in Sections **3.0** , above, the following interim reservations, covenants, conditions, use restrictions, agreements, and notices, more particularly identified in Section **2.4**, above, (**Attachment B**) shall be incorporated into each and every Quitclaim Deed covering only certain specific tracts of the Property identified in the site map at **Attachment "A"**, to be executed and delivered by the **Government** to **KSPDC** at any closing of the parties:

III(D)	Groundwater Use Restriction
III(C)	Area of Concern Areas/Ground Disturbance Restriction
III(B)	SWMU Areas/Ground Disturbance Restriction

#### **ARTICLE V**

##### **5.0 MODIFICATION OF INTERIM USE RESTRICTIONS**

**5.1** If the Transferee wishes to conduct a restricted activity (including excavation) on a Parcel on which any restriction as set forth in Article IV above applies for such Parcel, the Transferee shall prepare a written description of its proposal and submit it to KDHE, with a copy to the Army. Approval shall be received from KDHE, with notice to the Army, prior to the commencement of any such restricted activity.

**5.2** Notwithstanding the foregoing, any person holding a leasehold interest in any portion of such Parcel, as a condition to receiving such approval, shall first be required to obtain the written consent of the owner of the Parcel which they occupy, prior to submitting the request to KDHE.

5.3 In the event of a health or safety emergency, the Transferee shall be allowed to conduct such excavation or other such restricted activity on such Parcel, but only to the extent necessary to ameliorate such emergency.

## ARTICLE VI

### 6.0 MODIFICATION OR TERMINATION AND REMOVAL OF PERMANENT USE RESTRICTIONS

**6.1 The Government**, upon request by the record title owner, reserves the right and agrees to modify or terminate and remove any permanent land use restriction identified in **Section 3.1**.

**6.2** Any of the Property under the purview of this Section shall be subject to the following procedure for modification or termination and removal of permanent use restrictions.

**6.3** In the event the record title owner desires to use the Property for any use other than Non-Residential use (i.e. - the permanent use restriction identified in **Section 3.1**, above), then record title owner shall perform, or have performed, all additional environmental remediation required by law and the applicable federal and state regulatory authorities for such other uses and shall further comply with all laws, rules, regulations and ordinances pertaining thereto, including but not limited to zoning requirements and the requirements of all applicable regulatory authorities. Non-ResidentialAll costs associated with any such additional environmental remediation necessary for other than Non-Residential use shall be the sole responsibility of record title owner.

**6.4** The record title owner may be required to sign an administrative order and pursuant thereto will submit a work plan for any necessary, additional remediation for a use other than Non-Residential to the **Kansas Department of Health and Environment (KDHE)**. Upon approval of the work plan, and any condition imposed therein, by the KDHE, the record title owner will complete such additional investigation or remediation as may be required, if any, in accord with applicable law and regulations. The record title owner will, if required by KDHE, post a completion bond or such other financial assurances reasonably acceptable to the **KDHE** that the record title owner will complete any necessary, additional remedial action. Upon satisfactory completion of such necessary, additional remedial action and determination of such by KDHE, the completion bond and other financial assurances, if applicable, will be released.

**6.5** Upon completion of the any remedial action called for under **Section 6.4**, above, the record title owner shall submit a corrective measure(s) completion report and certification of completion to the **KDHE**.

**6.6** Upon receipt and final approval by the **KDHE** of the corrective measure(s) completion report and certification of completion from the record title owner, the **Government** will prepare and issue a certificate of modification or termination and removal of the permanent use restriction (the "Certificate/Modification or Termination of Permanent Use Restriction") in the form of **Attachment C**, which is hereby incorporated and made a part of this Matrix.

6.7 The Certificate/Modification or Termination of Permanent Use Restriction will be recorded by the **Government** in the office of the Johnson County Clerk, and a copy of the same will be sent by the **Government** to the record owner of the Tract.

## ARTICLE VII

### 7.0 TERMINATION AND REMOVAL OF INTERIM USE RESTRICTIONS BY GOVERNMENT

7.1 The **Government**, upon request by the record title owner, reserves the right and agrees to terminate and remove any interim use restrictions identified in Section 4.0, above, affecting the Property or any portion thereof.

7.2 Any of the Property under the purview of this Section shall be subject to the following procedure for termination and removal of interim use restrictions.

7.3 Upon completion of any necessary, required remediation by or on behalf of the Army, at any interim restriction site, the record title owner shall obtain from the applicable Federal and/or State regulatory authorities a certification of final completion of all necessary, required remediation.

7.4 Upon receipt by the **Government** of final certification of final completion of all necessary, required remediation from the applicable Federal and/or state regulatory authorities, the **Government** will prepare and issue a certificate of termination and removal of the interim use restriction (the "Certificate/Termination of Interim Use Restriction") in the form of **Attachment D**, which is hereby incorporated and made a part of this Matrix.

7.5 The Certificate/Termination of Interim Use Restriction of this Matrix. will be recorded by the **Government** in the office of the Johnson County Clerk, and a copy of the same will be sent by the **Government** to the record title owner.

## ARTICLE VIII

### 8.0 SUBSEQUENT DISCOVERY OF CONTAMINATION

8.1 The **Government** reserves the right to amend and modify this Matrix without the consent of the record title owner by adding additional SWMUs or Areas of Concern (AOCs) to those identified in **Attachment A** set forth in Section 1.2, above, but only at the request of KDHE, pursuant to the Consent Order issued to OEC, or after consultation with KDHE should further remediation be required by the Army, for the purpose of applying all applicable provisions of this Matrix. In the event the Government exercises its right to amend and modify this Matrix as provided in this Section 8.0, above, it will provide notice to the record title owner of the affected property, and in accordance with the provisions of Section 12.4 herein.

## ARTICLE IX

## 9.0 ENFORCEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS

**9.1 ENFORCEABILITY:** The covenants, conditions and restrictions stated in this Matrix benefit the governments of the State of Kansas, or it's political subdivisions, including, but not limited to KDHE, KSPDC, or other designated government agencies, and the **United States of America**, on behalf of the public in general, therefore, these covenants, conditions and restrictions are enforceable, by resort to specific performance or legal process, by the **United States of America** or State of Kansas, or it's political subdivisions, including, but not limited to KDHE, KSPDC, or other designated government agencies and by no other persons or entities. Enforcement of the terms of this instrument shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this instrument.

**9.2 NOTICE REQUIREMENT:** The record title owner will include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE EFFECT OF THE MATRIX OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CONVEYANCE TO THE STATE OF KANSAS, DATED \_\_\_\_\_, 1998, RECORDED IN THE PUBLIC LAND RECORDS OF JOHNSON COUNTY, STATE OF KANSAS, ON \_\_\_\_\_, 2000, AS ENTRY NO. \_\_\_\_\_, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_.

**9.3 ON SITE REMEDIATION:** The **Government** bears the ultimate responsibility for the on-going remediation of Sunflower necessitated by releases of hazardous substances and explosive materials into the environment from past **Government** activities on the Property.

## 9.4 VIOLATIONS OF RESTRICTIVE COVEANTS/AUTHORIZATIONS:

**9.4.1** If the record title owner takes any action in violation of this Matrix on any of the Property without obtaining prior review and approval from the **KDHE and/or the Government** as required by this Matrix, the action shall be halted until the prescribed review process is completed. If the action is approved by the **KDHE and/or Government** after review, the action may proceed to completion, but if the action is not approved, the record title owner will take all necessary and reasonable steps to restore the Property to its former condition or to another condition reasonably acceptable the **Government** and **KDHE**. If the **KDHE** or the **Government** determines such restoration is necessary to prevent material damage to human health or the environment, the record title owner will be liable for any additional costs incurred by the **Government** to conduct any investigation and response action that is made necessary by the action of the record title owner. The **Government** may allow the record title owner to conduct any such investigation and response action.

**9.4.2** Failure of the record title owner to comply with any of the requirements as set forth in this Matrix, may be grounds to require the

record title owner to modify or remove any improvements constructed in violation of this Matrix or take other appropriate action.

**9.5 REMEDIES - EXISTING RIGHTS AND REMEDIES UNDER LAW:** Nothing set forth herein shall be construed to waive any rights and remedies which the Government, the **United States of America, the State of Kansas State of Kansas, or its political subdivisions, including, but not limited to KDHE, KSPDC, or other designated government agencies**, or the record title owner, their respective successors and assigns, may have under existing statutory law.

## **ARTICLE X**

### **10.0 ANNUAL INSPECTIONS AND NOTICE OF VIOLATIONS**

**10.1** The record title owner shall conduct an annual inspection of the Property, at the direction and schedule established by KDHE, and provide a Certification to **KDHE** and the **Government**, that all of the restrictions, covenants, conditions and restrictions, set forth in this Matrix, are being complied with, or notifying **KDHE** and the **Government** of any conditions of non-compliance.

**10.2** The record title owner is required to notify the **Government** and **KDHE** immediately in the event it has actual knowledge of any violation of any restriction, condition, or covenant set forth in this Matrix.

## **ARTICLE XI**

### **11.0 CERCLA WARRANTY THAT ALL REMEDIAL ACTION HAS BEEN COMPLETED**

**11.1** Upon receipt of a letter or other documentation from the KDHE and the United States Environmental Protection Agency (EPA), Region 7, indicating that all necessary remedial action, as required by the **Consent Order** or under RCRA corrective action program have been completed for a Parcel subject to the Deferred Covenant, the **Government** will issue a Certificate of Completion of Remedial Action, substantially in the form attached hereto as **Attachment E** (the CERCLA Covenant Certificate) which includes the CERCLA Warranty that all necessary response action pertaining to the parcel has been completed.

**11.2** A copy of such letters or other documentation shall be attached as an exhibit to the CERCLA Covenant Certificate. The CERCLA Covenant Certificate will be recorded by the **Government** in the office of the Johnson County Clerk, and a copy of the same will be sent by the **Government** to the record title owner.

## **ARTICLE XII**

### **12.0 MISCELLANEOUS**

**12.1 AMENDMENT** The State of Kansas, or it's political subdivisions, including, but not limited to KDHE, KSPDC, or other designated government agencies, and the **United States of America**, retains the right to amend this



Matrix pursuant to Section 8.0 herein. All other amendments or modifications of this Matrix will be by the mutual consent and agreement of the Parties

**12.2 NON-WAIVER** The failure of the State of Kansas, or it's political subdivisions, including, but not limited to KDHE, KSPDC, or other designated government agencies, and the **United States of America**, in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, or other provisions of this Matrix or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment of such covenant, condition, restriction, or other provision, and the same shall remain in full force and effect.

**12.3 RECORD TITLE OWNERS BOUND** KSPDC, for itself and its successors and assigns, each owner, purchaser, lender, lessee, sublessee, or assignee of all or a portion of the Property, or interest therein, under any contract, mortgage, assignment, deed, lease, or sublease, or other agreement, accepts the same subject to all of the covenants, conditions, restrictions, and other provisions set forth in this Matrix and shall be bound by the same.

**12.4 NOTICES** Any notice permitted or required to be delivered as provided in this Matrix shall be in writing and shall be delivered either personally, by mail or by facsimile transmission, and in the case of emergency, by phone or facsimile transmission. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed

**TO THE ARMY :**

**TO THE GENERAL SERVICES ADMINISTRATION :**

**TO KSPDC :**

**TO KDHE :**

The foregoing addresses and phone numbers may be changed from time to time.

**12.5 SEVERABILITY** If any provision of this Matrix, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Matrix, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

**12.6 TERM** This Declaration and all covenants, conditions, and restrictions contained herein shall run with the land unless terminated by law or as herein provided.

**12.7 REFERENCES** All references to code sections include successor provisions.

**12.8 CONTROLLING LAW** The interpretation and performance of this instrument shall be governed by the laws of the State of Kansas and applicable federal laws.

**12.9 LIBERAL CONSTRUCTION** Any general rule of construction to the contrary notwithstanding, this Matrix shall be liberally construed in favor of effectuating the purposes of this Declaration and the policy and purpose of CERCLA, RCRA and other applicable law. If any provision of this Matrix is found to be ambiguous, an interpretation consistent with the purpose of this Declaration that would render the provision valid shall be favored over any interpretation that would render it invalid.

**12.10 NO FORFEITURE** Nothing contained herein will result in a forfeiture or reversion of the Government's title in any respect.

**12.11 CAPTIONS** The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon its construction or interpretation.

**12.12 GOVERNMENT APPROVALS** For purposes of this Matrix, the **Government, the state of Kansas, KDHE, and/or KSPDC**, covenants and agrees that any decision or approval required by the **Government, the state of Kansas, KDHE, and/or KSPDC**, hereunder will be rendered within a reasonable period after submittal for decision or approval, and the same will not be unreasonably withheld. Any requests for approval of the **Government, the state of Kansas, KDHE, and/or KSPDC**, required hereunder shall be submitted to the **Government, the state of Kansas, KDHE, and/or KSPDC**, in accordance with Section 12.5, above.

IN WITNESS WHEREOF, the parties hereto have hereunto entered into this Matrix the \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

UNITED STATES OF AMERICA,  
Acting by and through the  
Administrator of General Services

By \_\_\_\_\_  
General Services Administration

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Matrix was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by \_\_\_\_\_ of the General Services Administration, on behalf of the United States of America.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_

KANSAS STATEWIDE PROJECTS  
DEVELOPMENT CORPORATION

By:

\_\_\_\_\_  
Kenneth Frahm, President

STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF SHAWNEE            )

The foregoing Matrix was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000, by \_\_\_\_\_, \_\_\_\_\_, on behalf of the Kansas Statewide Projects Development Corporation.

WITNESS my hand and official seal.

\_\_\_\_\_

My commission expires \_\_\_\_\_